IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 315 OF 2006

SHIRPI WOOD CRAFT INDUSTRIES, BARDEZ, GOA. ....Petitioner

Versus

M/S. UMESH STORES AND 2 ORS., ...Respondents

Mr. Samir Taleigaonkar, Advocate for the petitioner.

Mr. M.S. Joshi, Advocate for the respondents.

Coram:- J. N. PATEL, J.

Date:- 23rd November, 2006

ORAL ORDER

Heard.

The petition is pending for service on respondent no.3 who is one of the partners of respondent no.1 firm. The learned Counsel appearing for respondent no.1 firm and the other partner Mr. Umakant Srinivas Naik states that he has no objection if the petition is disposed of without serving the respondent no.3. Even otherwise, this Court finds that respondent no.1 firm is basically a family concern and respondent no.3 appears to be the wife of the younger brother of respondent no.2. Therefore, it is not necessary to serve respondent no.3 as the respondent no.1 firm and one of its partners are already served.

Heard.

The petition can be disposed of at the stage of admission itself. The short question which requires consideration is whether the Trial Court was justified in dismissing the application for adjournment and closing the suit

of the plaintiff without giving opportunity to the plaintiff to lead evidence which has resulted in virtually dismissing the plaintiff's claim in the suit.

Learned Counsel for the petitioner/original plaintiff submits that the petitioner/original plaintiff is a proprietory concern represented by its proprietor Mr. Naresh Salgaonkar who is a diabetic patient and was frequently required to visit Mumbai for his treatment and is also a physically challenged person as one of his leg is amputed and he has an artificial leg and that is why he is required to visit Mumbai for his treatment and adjustment of the artificial leg. It is submitted that inspite of the application for adjournment was made incorporating all these reasons, the learned Trial Court rejected the application on the ground that it was the fifth adjournment sought by the plaintiff and there was no medical certificate attached to the application.

The learned Counsel appearing for the respondent/defendant submitted that the Court was justified in taking such a decision in absence of any bonafide reason being placed before him by the plaintiff to seek adjournment.

There is no controvercy over the fact that the Court is not supposed to adjourn the suits without any justification, but in the present case, though the adjournment was sought on the fifth occasion, but there were circumstances which were beyond the control of the plaintiff as he had gone to Mumbai for his treatment. There is no reason why the plaintiff who has come to the Court would unnecessarily seek adjournment on false ground mainly because the medical certificate was not filed will it be enough for the Trial Court to have disbelieved the reason given in the application for seeking adjournment. Further, the learned Counsel for the petitioner/plaintiff submits that this was the second adjournment sought by the plaintiff and not the fifth adjournment as contended by the other side.

The crux of the matter is not the number of the adjournment, but the

bonafides in prosecuting the litigation.

In case the Court was of the view that the adjournment was being unnecessarily sought, at the first instance it could have imposed costs on the plaintiff so as to compensate the defendant, rather than taking such drastic step.

Therefore this Court quash and set aside the impugned order and restore the suit to the Trial Court and direct the Trial Court to proceed inaccordance with law. It is also made clear that the parties should be deligent in conducting the matter and will not seek unnecessary adjournment before the Trial Court.

The petition stands disposed of accordingly, with no order as to costs.

J. N. PATEL, J.

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